

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

BFG FEDERAL CREDIT UNION

And

CASES

08-CA-151936

08-CA-155464

**THE OFFICE AND PROFESSIONAL
EMPLOYEE INTERNATIONAL UNION,
LOCAL 1794**

08-CA-155492

08-CA-157897

08-CA-161543

**COUNSEL FOR THE GENERAL COUNSEL'S RESPONSE IN OPPOSITION TO
RESPONDENT'S EMERGENCY MOTION TO RESCHEDULE HEARING**

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel files this Response in Opposition to Respondent's Emergency Motion to Reschedule Hearing and respectfully requests that the Chief Administrative Law Judge deny this Motion. Respondent requests that the hearing be postponed in order for Counsel for the General Counsel to fully explore Respondent's inability to pay claim. The General Counsel opposes Respondent's second motion to reschedule the hearing as it has failed to show good cause. The General Counsel asserts that there is no need for it to further assess Respondent's inability to pay claim as the parties are far from settling this case.

In its motion, Respondent, which continues to operate its business, represents that it is desirous of working out a settlement and that it has been heavily engaged in settlement discussions with both the Union and the General Counsel. In this connection, Respondent has neither agreed to enter into a formal settlement stipulation, nor an informal Board settlement. See Sections 101.9(b)(1) and 101.9(b)(2) of the Board's Statements of Procedure. While the

parties have had numerous settlement discussions to date, Respondent has yet to agree to any of the affirmative non-monetary provisions of the proffered settlement agreement, and it has not agreed to the Notice language that was sent to it on June 21, 2016, having not even made a counterproposal. Respondent has yet to agree to offer reinstatement to the laid off employees and has not agreed to restore the length of service awards. Respondent has outright refused to restore the pension. Respondent has not agreed to provide the Union with requested information or bargain over a reasonable accommodation to produce the contents of the report from the National Credit Union Administration. Furthermore, Respondent has failed to make a firm backpay proposal regarding the allegations related to its decision to freeze its pension fund, despite Counsel for the General Counsel's repeated requests for a proposal.

Respondent also asserts that sufficient grounds exist for its requested postponement because Counsel for the General Counsel recently requested additional information from Respondent regarding its inability to pay claim. Respondent contends that during a phone call on August 15, 2016, Counsel for the General Counsel informed Respondent that one of its representatives would need to sit for a two-day deposition to explain its financials and also requested that Respondent complete a lengthy written evaluation of twenty-six questions containing several subparts. However, Respondent misrepresents what transpired. The Region did not request this information from Respondent. Rather, the Region's Compliance Officer explained the procedure pertaining to inability to pay claims after the issuance of a Board order. The Compliance Officer explained such an investigation would include a twenty-six question evaluation and a deposition of a representative of respondent to explain its financials. Additionally, during this phone call, the Region's Compliance Officer asked Mr. Baisden several questions about a document provided to the Region related to Respondent's application of sale

proceeds from its Twinsburg branch. The Compliance Officer also asked Mr. Baisden whether Respondent had any kind of liability insurance. Mr. Baisden provided no meaningful responses. Respondent implies that Counsels for the General Counsel assented to a postponement by indicating availability from September 13-16. While Counsels for the General Counsel did indicate such availability, that was in the interest of scheduling dates for any resumption of the hearing scheduled to begin on August 22, 2016.

Respondent's Motion incorrectly suggests that the parties are close to reaching a resolution. In fact, agreement has not been reached on any one of the alleged unfair labor practice violations. Respondent has failed to show good cause, and granting its Motion would delay any remedy for the alleged discriminatees in this matter. It is respectfully requested that Respondent's Emergency Motion to Reschedule Hearing be denied.

Dated at Cleveland, Ohio this 16th day of August 2016.

Respectfully submitted,

/s/ Olivia Kotter
Olivia Kotter
Counsel for the General Counsel
National Labor Relations Board
Region 8